1))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1309 of 2000
with
CIVIL APPLICATION No 11571 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE SHARAD D.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF DECD. JASHWANTLAL VAGHJIBHAI SONI
Versus
JAYESHKUMAR CHHAGANLAL SONI

Appearance:
1. Civil Revision Application No. 1309 of 2000
MR HM PARIKH for Petitioners No. 1-1/2
MR AB MUNSHI for Respondent No. 1

CORAM : MR.JUSTICE SHARAD D.DAVE

Date of decision: 31/01/2002

C.A.V. JUDGEMENT

1. Rule. Mr. A.B.Munshi L.A. for the opponent waives service of rule. With the consent of the learned

advocates, this matter is heard finally.

2. This Civil Revision Application is filed against the order passed on exh. 415 in Regular Civil Suit no. 573/82 dated 10.10.00, whereby the learned trial judge dismissed the application for producing the copies of day book.

3. It is case of the petitioners that their father was a tenant in the suit property and was paying Rs.300/yearly towards rent for it which was paid till the previous year. The opponent served notice to the petitioners claiming rent at the rate of Rs.100/- and alleging that it was due from 7.2.55 to 18.10.82. As the notice was false, the father of the petitioners filed Civil Misc. Application No. 104/81 for fixing standard rent wherein the copy of the ledger was produced which was verified by the officer of the court. On the same day, the day book was also verified but due to some inadvertence, the copies of the daybook was not produced before the Court.

4. The opponent, thereafter, filed Regular Civil Suit no. 293/82 before the learned Civil Judge (S.D.) at Nadiad contending that rent is due for the last 8 years. Again the opponent-landlord filed Regular Civil Suit no. 573 of 1982 for possession of arrears of rent against the deceased-father of the petitioners wherein he stated that rent is due for last 27 years. As the parties in all the three matters are same, the learned trial judge consolidated all the three proceedings and only one evidence is recorded in all the three matters.

5. The evidence of the plaintiffs-respondents is over and the evidence of the defendants-petitioners is in progress. At this stage, the petitioners gave an application exh. 415 stating that the copies of ledger have already been produced but the copies of the day book are not produced and they may be permitted to produce the same on record because without the copies of day book, the ledger entries cannot be proved. This application was dismissed by the trial judge which gave rise to this civil revision application.

6. It is the case of the petitioners that the learned trial judge ought to have considered the fact that the copies of the ledger book have been produced and there cannot be any bad motive for the late production of the copies of the daybook. It was a bona fide mistake. There is sufficient cause for non production of the same and yet the cross-examination of the petitioners' witness

is pending. Merely an endorsement is made that the application is not bona fide, the application should not have been rejected by the trial court. Only with a view that to prove the account book, both the copy of the day book and ledger book are necessary, this application was made and in the interest of justice it was required to be allowed. Under Order 13 of the Civil Procedure code, the trial court has jurisdiction to allow the production if sufficient cause is shown. Under the circumstances, runs the submission of Mr.H.M.Parikh L.A. for the plaintiffs, that the production of the documents should be allowed in the interest of justice.

7. In support of his submissions, Mr.Parikh L.A. for the petitioners relied on the following authorities :

1. Lallubhai Virchand V/s Ratilal Bhikhabhai and Ors. reported in 1967 (8) G.L.R. page 851.
2. Saifuddin Mosinali V/s Vora Rajabali Taiyabali reported in 1983 (1) G.L.R. page 91.
3. Madangopal Kanodia V/s Mamraj Maniram and Ors. reported in AIR 1976 SC 461.

8. Against the submissions, Mr.A.B.Munshi L.A. for the respondent submitted that when the original tenant-father of the present petitioners was alive, he has not produced the same in court. Now, when the evidence of the plaintiffs' side is over and the defendants are required to be cross-examined, at this belated stage they gave application to produce the documents which were in their possession since long. If the present petitioners are allowed to produce the documents, it will lead to new evidence in the matter. Therefore, the said application deserves to be dismissed with costs.

9. In support of his submissions, Mr.A.B.Munshi L.A. for the opponent relied in the case of K.Patel & Company V/s Shah Mahesh Ratilal, a firm reported in 1982(1) G.L.R. 283 and submitted that if any document is permitted to be produced after the evidence of the plaintiff and one of the defendants was over, before the trial court, there would be considerable impediment and hampering of smooth trial of suits which are tried by the Civil Judges throughout the State. At last, he submitted that the present petitioners wanted to delay the matter and therefore, has given this application late.

10. From the record, it appears that application exh. 318 was allowed and on death of the original tenant Mr.Jashwantlal Vaghjibhai Soni, his two sons Harishkumar

and Bharatkumar were joined as party-defendant.

11. Under Sec. 115 of the Code, the High Court will not reassess the material and sit to reach for a conclusion, different from as reached by the courts below only on the ground that if it had considered the the matter at a trial stage, it would have come to the contrary conclusion. If the trial judge has committed any illegality or irregularity in exercise of the jurisdiction in passing the impugned order, then only this court will have to interfere under sec. 115 of the Code.

12. Reverting back to the facts of this case, it appears that the copies of the daybook and ledger book were prepared and handwritten by the deceased father of the present petitioners/original defendants who died on 23rd November, 1981 i.e. before 20 years. When the present petitioners examination-in-chief was recorded, they came to know that while filing Misc.Civil Application No. 104 of 1981, he produced ledger entries but the daybook was not produced. The purpose would be served only if both the books are produced on record. It may be possible that by mistake the documents may not have been produced on record. Therefore, at the most the trial court ought to have imposed cost instead of dismissing the application.

13. In case of Madangopal (supra) the Apex Court has observed in para 26 as under :

> " It is well settled that pleadings are loosely drafted in the Court and the Courts should not scrutinise the pleadings with such meticulous care so as to result in genuine claims being defeated on trivial grounds."

In case of Saifuddin Moshinali (supra), this court after discussing Order 13 Rules 1 & 2 has observed that :

> " Though this provision is to be construed liberally so far as to advance the cause of justice, it cannot be urged that even if no good cause is shown for late production, it must be permitted on payment of cost. It is not a matter of right of the party, but a matter of discretion of the court."

14. If we peruse the case of K.Patel & Co. (supra), as relied on by the advocate for the opponent, it was the

case that after evidence of plaintiff and one of the defendants was over, attempt was made to produce a document. This Court also held that ordinarily the orders passed by the trial court should not be disturbed unless they finally dispose of the suit. If such interference is made it would cause considerable impediment and hampering of smooth trial of suits.

15. In the case before me, the examination-in-chief of the petitioners/original defendants is over and they are to be cross-examined by the L.A. for the plaintiff-landlord. At this time, all of sudden he came to know about the nonproduction of the documents which were already certified by the court long back. Therefore, the facts of K.Patel & Co. (supra) are different.

16. Therefore, I am of the opinion that this court should interfere with the order of the trial court and if the cost of Rs.1,500/- is ordered to be paid by the present petitioners/tenants to the opponent/landlord, the ends of justice would meet. Therefore, this Civil Revision Application is allowed subject to deposit/payment of cost of Rs.1,500/- to the opponent-landlord by the petitioners-tenants. On such deposit/payment of Rs.1,500/-, the trial court s permit the petitioners to produce the necessary documents as required by them and permit the landlord/opponent to lead further evidence, if any in regard to the late production of documents only.

Civil Revision Application is allowed accordingly. Rule made absolute. Civil Application is disposed of accordingly in view of the above order in Civil Revision Application.

(SHARAD D DAVE, J)

srilatha